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Serial No. 10/797,486

Resp. to Off. Act. of March 3, 2006

UTILITY PATENT

B&D No. JK01261

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Matthew A. SMITH et al.**

Serial No.: 10/797,486

Examiner: P. Nguyen

Filed: March 10, 2004

Group Art Unit: 3724

For: OPTICAL PROXIMITY DEVICE FOR POWER TOOLS

Assistant Commissioner for Patents
Washington, DC 20231

ELECTION

I, Adan Ayala, PTO Reg. No. 38,373, hereby certify that this
correspondence is being facsimile transmitted to the Patent and
Trademark Office Fax No. (571) 273-8300 on 6-7-06



Adan Ayala

Dear Sir:

This is in response to the Office Action of March 3, 2006.

The Examiner has requested the election between several species. In particular, the Examiner has identified Group I to include Species A (an infrared light source), Species B (a near infrared light source), Species C (a combination of infrared light source and near infrared light source), Species D (a visible light source), and Species E (a combination of all above light sources). In addition, the Examiner has identified Group II to include Species F (a diffuse reflectance electro-optical detector) and Species G (an indium-gallium-arsenic base detector).

In response, this restriction requirement is respectfully traversed because the Examiner will not incur a serious burden in examining all the claims.

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Assuming for the sake of argument that the species are independent or distinct as alleged by the Examiner, the Examiner has failed to show any serious burden in examining all claims together. Under MPEP § 808.02, "[w]here the related inventions as claimed are shown to be independent or distinct..., the examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required." The Examiner has failed to do so.

This is not surprising, as the species are joined by several generic claims. Furthermore, as discussed below, Applicants will elect Species A, which include Claims 1-14, 17-19, 22-29, 32-34, 36-42, 44-45 and 47. In other words, the Examiner will have to examine 38 out of 46 claims anyway. Accordingly, examining eight additional claims will not constitute a substantial burden. Therefore, Applicants request that all claims be examined together.

Nonetheless, the Examiner advised that a reply to this requirement must include an identification of the species and a listing of all claims readable thereon. Pursuant to such requirement, Applicants elect with traverse Applicants will elect Species A, which include Claims 1-14, 17-19, 22-29, 32-34, 36-42, 44-45 and 47.

The claims are patentable and the application is believed to be in condition for formal allowance. Allowance of the pending claims is respectfully requested.

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The Commissioner is authorized to charge payment of a one-month fee (\$120.00), as well as any other fees due in processing this response, or credit any overpayment to Deposit Account

No. ~~02-2548.~~

Respectfully submitted,



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